

CANUCK LAW

Reporting That You're Not Getting Elsewhere (Do Your Own Research To Verify)

SEPTEMBER 17, 2024 BY RONNIE

CSASPP Defamation Appeal To Be Heard In January 2025

COURT OF APPEAL FOR ONTARIO
OSGOODE HALL
130 QUEEN STREET WEST
TORONTO, ONTARIO M5H 2N5



COUR D'APPEL DE L'ONTARIO
OSGOODE HALL
130 RUE QUEEN OUEST
TORONTO, ONTARIO M5H 2N5

COA-24-CV-0004

BETWEEN:

Rocco Galati

Appellant

-and-

Donna Toews (aka "Dawna Toews"), Kipling Warner, Canadian Society for the
Advancement of Science and Public Policy ("CSAPP"), Dee Gandhi, Janes and Johns
Doe

Respondent

Notice of Hearing

This appeal has been listed for hearing on:

A high profile defamation Appeal is now scheduled to be heard in the new year. The Court of Appeal for Ontario will hear arguments on January 13th, 2025, to determine whether or not Justice Chalmers should have thrown out a lawsuit in late 2023 under anti-SLAPP laws. There's also a challenge to the \$132,000 cost award that was handed down.

This is the \$1.1 million “intimidation lawsuit” brought against CSASPP, the Canadian Society for the Advancement of Science in Public Policy, and one of their donors. For more background, see the [decision](#) and the [cost award](#). They provide the necessary information to understanding how events played out.

Supposedly, it was over a “defamatory” email to Dan Dicks of Press for Truth, and a posting on CSASPP’s FAQ page. In reality, the suit was filed to derail the Law Society of Ontario (LSO) complaint filed by Donna Toews.

[89] With respect to the claim against Ms. Toews, I am of the view that “what is really going on” is ***an attempt to intimidate members of the public who may be considering making a complaint about the Plaintiff to the LSO***. The effect of the action against Ms. Toews would be to ***obstruct the regulatory process***. The harm this would cause in the LSO’s ability to receive and process complaints about lawyers is, in my view significant.

[98] For the reasons set out above, I find that the ***Plaintiff brought this action for the improper purpose of stifling debate*** with respect to his handling of a proposed class action that is being funded by public donations. I also note that the Claim was brought one day before the Plaintiff submitted a response to the LSO with respect to Ms. Toews complaint. ***I find that the Claim was brought for the improper purpose of limiting the LSO investigation, and to intimidate others from making any LSO complaints about him.***

Justice Chalmers made it clear in paragraphs [89](#) and [98](#) of his decision that this was an intimidation lawsuit, designed at least in part to stop others from filing complaints with the LSO.

And it didn’t stop there. The LSO itself was sued in [2022](#), and again, in [2023](#), to further bury the Toews complaint. The earlier one was [struck](#) for failing to state a Cause of Action (ask for something the Court can actually provide). No amended Statement of Claim has been filed, and the other case appears inactive.

Included are the Factums of both sides, which are the arguments submitted. For reference, the [Appellant\(s\)](#) are the ones who commence the proceedings, while the [Respondents](#) are the ones who have to answer. There is an Appeal Record of several thousand pages, but it’s primarily a compilation of documents previously submitted.

Anyhow, here are some points to note.

Appeal Attempts To Reargue Entire Motion

The Appellant's Factum attempts to reargue the Motion which led to Justice Chalmers throwing the case out. Instead, he should have been outlining the errors the Judge (allegedly) made.

When asking to have a Decision reviewed, there are only a few options.

TYPE OF ERROR	STANDARD FOR REVIEW
Error of Fact	Overriding, Palpable Error
Error of Pure Law	Correctness
Mixed Fact & Law	Spectrum, Leaning To Overriding, Palpable Error
Discretionary Orders	Overriding, Palpable Error

The *correctness* standard in law is meant to ensure that litigants are treated fairly, and held to the same standards. If a Lower Court hasn't done this, then the Higher Court is able to step in.

The *overriding, palpable error* standard reflects that Judges are often in the best position to oversee the case, and that their decision making ability is owed a deal of deference. This applies to factual findings, and discretionary orders, such as costs and damages. Nonetheless, clear errors can still be fixed.

This is what should have been done: spell out the errors (if any) made by Justice Chalmers. The standard is *Housen v. Nikolaisen*, set over 20 years ago. Instead, it comes across as a demand to have the original matter reheard. This isn't the role of the Appellate Courts, and he should know better.

The Respondents' Factum addresses this quite well.

Appellant's Ridiculous Demands Regarding Costs

PART IV- ORDER REQUESTED

65. The Appellant therefore respectfully requests:

- (a) that the decision of Chalmers. J. be set aside;
- (b) that the matter proceed to trial/summary judgement motion;
- (c) (i) costs of the motion and the within appeal in favour of the Plaintiff;
- (ii) or, in the alternative, no costs to the Defendants regardless of outcome;
- (d) such other or further relief as this Honourable Court deems fit.

All of which is respectfully submitted.

Dated this March 1st, 2024



Rocco Galati B A LL B LL M

One amusing thing of note is the Relief sought. In fairness, litigants are free to ask for whatever they want, but this is comical. The Appellant asks for costs both for this Appeal, and for the original Motion that he lost. In the alternative, he wants costs waived altogether. Doesn't work like that.

Repeatedly Implying Justice Chalmers Rigged Decision

31. The Appellant states that not only did Justice Chalmers not apply this binding case from the Ontario Court of Appeal to the facts and evidence before him, **Justice Chalmers completely ignored it**, and thus erred in law.

41. The Plaintiff states that is clearly present in the within action. **Justice Chalmers ignored the Supreme Court of Canada jurisprudence** in applying the test.

42. In the within case there is “grounds to believe”, and “reasonably capable of belief”, that the Plaintiff can succeed on at least one of the “stings”, which he clearly can based on the statements, and law. Again, **Justice Chalmers ignored the binding Supreme Court of Canada jurisprudence**. Justice Chalmers finding that the assertions were backed up by hyperlinks, makes a final determination that they are “true”. They are not. They are not even

“partial truths” and ***Justice Chalmers does not deal with the Plaintiffs evidence*** in this respect.

43. Again, which is applicable to the within action, more than a single basis exists.

Justice

Chalmers ignored this evidence and jurisprudence

44. The Plaintiff states that not only did the Society’s website “FAQ” exceed this privilege but coupled with the email to Mr. Dicks, the Defendants went out their way to depict the Plaintiff as incompetent, unprofessional, and dishonest and a fraud. The Defendants’ assertion that they were responding to queries as to the connection between them as the Plaintiff rings false. They could have simply stated that there was no connection between them and the Plaintiff and left it there. Furthermore, their assertions of being flooded with queries and complaints about the Plaintiff also rings false as they could only produce one (1) such query/complaint on cross-examination. ***Justice Chalmers ignored this binding jurisprudence.***

45. The Plaintiff states that this also applies to the within action, and that ***Justice Chalmers ignored this jurisprudence and did NOT deal with an[y] of the above***, which was before him and argued by the Plaintiff.

46. It is worth noting that, in the within action, all the facts on the findings by the Supreme Court of Canada Bent v. Platnick are more than present here in the within action. The Defendants, engaged in reckless statements and innuendo, without sober investigation, in a singularly distorted and targeted exercise of painting the Plaintiff as generally incompetent, unprofessional, dishonest, and a “fraud”. Any defence of qualified privilege, on fair comment, or responsible publication is therefore defeated. ***Justice Chalmers does not deal with this argument nor the evidence to support it.***

50. The Appellant states that the evidence is that, as a result of the defamatory publications the Plaintiff was subject to hostile and viscous reaction from the public at large, including threats to bodily harm, as well as an obliteration of donations to the Constitutional Rights Centre (CRC) as set out in the affidavit evidence. This ***evidence was not only ignored by Justice Chalmers, but stated not to exist***, which is a palatable and blatant error

55. ***Justice Chalmers further ignores and does not address the Plaintiff's submissions, and evidence*** supporting those submissions, on the conspiracy tort pleaded.

56. ***Justice Chalmers further ignores and does not address the Plaintiff's submissions and evidence*** supporting those submissions, contained in paragraphs 59 to 73 of the Plaintiffs factum before the Court.

These quotes are from the Appellant's Factum. He repeatedly claims that Justice Chalmers “ignored” the information that was put in front of him. One can interpret this as an allegation that the Motion was rigged. Elsewhere in the Factum, it's implied that he was grossly incompetent.

This really isn't a good look, if one wants the Ontario Court of Appeal to take this case seriously.

Although not part of the Appeal, the Court probably won't be amused by this either. At a virtual press conference back on March 27, 2023, he claimed that Judges “are pretending they weren't pointed to the jurisprudence”. In other words, it's an accusation that the judicial system is corrupt. Should lawyers be saying such things?

Repeatedly Citing (Largely Irrelevant) Case: Bent V. Platnick

The 2020 Supreme Court of Canada case, Bent v. Platnick, was repeatedly quoted in the original Motion, and again in the Appeal. It was another defamation case, but the allegations made there were *far* worse than anything CSASPP had published. The levels are so different that it's actually quite unhelpful.

Appeal Nearly Dismissed For Unnecessary Delay

COURT OF APPEAL FOR ONTARIO

BETWEEN:

ROCCO GALATI

Appellant / Responding Party
(Plaintiff)

- and -

DONNA TOEWS (AKA "DAWNA TOEWS"), KIPLING WARNER, CANADIAN
SOCIETY FOR THE ADVANCEMENT OF SCIENCE AND PUBLIC POLICY
("CSAPP"), DEE GANDHI, JANES AND JOHNS DOERespondents / Moving Parties
(Defendants)

INDEX

Tab	Document
1.	Notice of Motion dated August 6, 2024
2.	Affidavit of Eric Kingsland affirmed August 6, 2024
A.	Notice of Appeal dated January 4, 2024
B.	Notice of Intention to Dismiss Appeal for Delay dated February 6, 2024
C.	Email correspondence from the Court of Appeal for Ontario Appeal Case Management Officer dated July 30, 2024, and; Email correspondence from Tim Gleason to the Appellant dated July 30, 2024

Once an Appellant files all of their major “books”, there’s a final document called the *Certificate of Perfection* that needs to be included. Aside from the extra fee, it tells the Court that everything has been done, and that a hearing date should be set.

Apparently, it wasn’t done here properly. It was only after a Motion to Dismiss had been brought, that it was filed. Now, it could be sloppiness, but CSASPP believes it to be intentional delay.

Champerly And Maintenance: VCC Donors Paying For Appeal?

The preparation of this application has entailed a masking expert affidavit exceeding 2,600 pages of expert testimony and annexed reports; a PCR expert affidavit exceeding 6,100 pages of expert testimony and annexed data and expert reports concluding that the PCR test is being fraudulently used to elevate “case numbers” with a false positive rate of 96.5%; an expert report on the detrimental and developmental damages caused by masks especially on children; an expert report on the detriment of the measures and online learning on children; as well as over 30 affidavits by the Applicants, who include children, parents and teachers, outlining the ordeal they have suffered, establishing the required factual evidence and basis for their seeking of constitutional relief. All in all, there will be well over 11,000 pages of evidence filed in this application, just on the part of the applicants.

4. In addition, an action has been proceeding and well under way, suing in defamation those who have viciously maligned doctors on social media, who post information and expert opinion contrary to the state narrative.
5. An action will be filed imminently against the Government of BC, Premier John Horgan, Health Minister Adrian Dix, Public Safety Minister Mike Farnworth, and Public Health Officer Dr. Bonnie Henry. This action, spanning 425+ pages, will hold these individuals and institutions accountable for the harm and deaths caused by their actions and failure to act responsibly in response to COVID-19.
6. The defence of those instrumental in organizing protests, a constitutionally protected right.

Both Ted Kuntz and Tanya Gaw submitted Affidavits in support of the original claim.

On Exhibit #C, page 21 of Kuntz's Affidavit, there are remarks indicating that Vaccine Choice Canada had used donor money to finance defamation actions on behalf of doctors on social media. Presumably, this refers to Kulvinder Gill and Ashvinder Lamba.

Now the obvious question: are donors paying for this as well?

Overall, the Appeal comes across as a delay tactic. This is partly to avoid paying the \$132,000 in costs that are owed, and partly to avoid the consequences of commencing a lawsuit to sabotage the Toews LSO complaint. But in the end, this Appeal will be dismissed as well.

Ontario's anti-SLAPP laws (Section 137.1 of the Courts of Justice Act) have “full indemnity” as a default position for costs. This means that if a Defendant is successful in getting such a lawsuit tossed, they are presumptively entitled to 100% of their costs back. This makes defamation suits very risky to pursue.

Of course, a competent lawyer should know that.

CSASPP/RG DOCUMENTS (June 2022)

- (1) [CSASPP RG Statement Of Claim](#)
- (2) [CSASPP RG Moving Party Motion Record Volume 1](#)
- (3) [CSASPP RG Moving Party Motion Record Volume 2](#)
- (4) [CSASPP RG Moving Party Motion Record Volume 3](#)
- (5) [CSASPP RG Responding Motion Record Volume 1](#)
- (6) [CSASPP RG Responding Motion Record Volume 2](#)
- (7) [CSASPP RG Responding Motion Record Volume 3](#)
- (8) [CSASPP RG Moving Party Supplemental Motion Record](#)
- (9) [CSASPP RG Moving Party Record Motion To Strike](#)
- (10) [CSASPP RG Plaintiffs Responding Record Motion To Strike](#)
- (11) [CSASPP RG Transcript Brief](#)
- (12) [CSASPP RG Moving Party Factum \(Arguments\)](#)
- (13) [CSASPP RG Responding Plaintiff Factum](#)
- (14) [CSASPP RG Moving Parties Reply Factum](#)
- (15) [CSASPP RG Reasons For Judgement](#)
- (16) [CanLII Posting Of Decision](#)

CSASPP/RG APPEAL DOCUMENTS (2024)

- (1) [CSASPP Defamation Appellant Factum](#)
- (2) [CSASPP Defamation Respondent Factum](#)
- (3) <https://www.covidconstitutionalchallengebc.ca/status-updates>
- (4) <https://www.scribd.com/document/768627727/2024-09-12-Notice-of-Merit-Hearing-13-January-2025>
- (5) <https://www.scribd.com/document/758138683/2024-08-06-Defendant-Respondents-Motion-Record-to-Dismiss-for-Delay>

1ST LAW SOCIETY OF ONTARIO CLAIM (July 2022)

- (1) [Law Society Of Ontario Statement Of Claim](#)
- (2) [Law Society Of Ontario Intent To Defend](#)
- (3) [Law Society Of Ontario Amended Statement Of Claim](#)
- (4) [Law Society Of Ontario Requisition For Amended Claim](#)
- (5) [Law Society Of Ontario Motion Record, To Strike](#)
- (6) [Law Society Of Ontario Moving Party Factum To Strike](#)
- (7) [Law Society Of Ontario Plaintiff Responding Factum](#)

2ND LAW SOCIETY OF ONTARIO CLAIM (July 2023)

(1) Law Society Of Ontario Second Statement Of Claim

 **FREE SPEECH, SLAPP, SUBVERSION**